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October 30, 2003

Via Electronic Filing

Hon. Michael E. Powell
Chairman
Federal Communications Commission
44512th Street SW
Washington, DC 20554

Re: MB Docket No. 02-230

Dear Chairman Powell:

Given the press of time we are writing for the sole purpose of correcting the record with respect to recent misrepresentations by the Motion Picture Association (MPAA) regarding the broadcast flag and its relationship to the Commission's Plug-and-Play order.

The letter you received from Mr. Jack Valenti, dated October 29, contains this assertion: "The Commission's Plug-and-Play Order has already given one content protection technology, 5C, a first mover advantage in the marketplace. All plug-and-play compliant devices will contain 5C protected digital outputs." This is flatly wrong in several basic respects:

First, no such "first mover" advantage is given. Section 2.4 of the Compliance Rules ("CR") of the DFAST License Agreement, as reviewed by the Commission and now publicly offered to manufacturers, contains two "safe harbors" for protected digital interfaces: the "IEEE 1394" interface if protected by "DTCP" (5C), and the DVI or HDMI interface if protected by "HDCP" (not 5C). Additional combinations of interfaces and security technologies are subject to expedited approval under CR 2.4.4.

Second, Mr. Valenti is incorrect in reading the Plug-and-Play Report and Order or regulations, or the DFAST License Agreement, as requiring use of a particular output, or indeed of any output at all. There is no requirement that any DFAST-licensed device contain a "5C protected digital output."[1]

[1] Mr. Valenti may have been confused by a hasty reading of new Part 76.640(b)(4) of the FCC regulations, which requires that a *cable MSO* "(i) Effective April 1, 2004, upon request of a customer, replace any leased high definition set-top box, which does not include a functional IEEE-1394 interface, with one that includes a functional IEEE 1394 interface…." and "(ii) Effective July 1, 2005, include both a DVI or HDMI interface and an IEEE 1394 interface on all high definition set-top boxes acquired by a cable operator for distribution to customers." Both of these interfaces have already been in common use by MSO equipment providers or were included in product plans long ago. Nothing about this obligation is uncertain or surprising. Yet the effective date for compliance in all

In addition to having misrepresented the by-now familiar “plug-and-play” terms, Mr. Valenti fails to note that the FCC’s own “FNPRM” has invited a full-scale review of the process for approval of new interfaces and methods of protection.

Finally, MPAA's October 28, 2003 letter includes an amended proposed regulation containing a waiver provision, Subsection B.2(d), that would be available for manufacturers unable to meet the MPAA's proposed July 1, 2004 effective date for plug-and-play devices or devices subject to the DTV tuner mandate.

In CEA's October 16, 2003 letter we made it clear why July 1, 2005 is the earliest practical effective date for mandated incorporation into digital TV products of the capability to recognize and respond to the broadcast flag, reiterating the realities of the manufacturing cycle for consumer electronics (CE) equipment that the Commission has accepted and incorporated into its regulations in an unbroken line of precedents from closed captioning to V-chip to the DTV tuner mandate. These issues, and the proposed “waiver” approach discussed below, also were reviewed in the October 24 letter of Adam Goldberg of Sharp Laboratories.

The waiver provision suggested by MPAA, far from curing the problem with its proposed seven to eight month time frame for manufacturing broadcast flag compliant equipment, adds insult to injury.

If adopted as MPAA proposes, it would insinuate the Commission into the most minute details of consumer electronics manufacturing, requiring the Commission to review purchasing decisions, steps in the manufacturing process, costs of compliance and even valuation of parts that can no longer be returned.

The invasiveness of the proposed waiver provision certainly is without precedent in the Commission's tightly confined regulation of CE devices, and arguably, is without precedent in all of the Commission's regulations. There is absolutely no basis in law or regulation for the Commission's exercise of such intrusive powers over the manufacturing of consumer electronics products.

Moreover, the time that would be necessary for the waiver applicant to compile the information that MPAA would require, and for the Commission then to review it and render a decision, would consume many months. In the interim manufacturers would be forced to assume that the Commission would grant the waiver and risk enormous economic loss if the Commission fails to do so; or wait for the Commission to act on the waiver and ensure non-compliance with the implementation deadline if the Commission rejects the waiver request.

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products newly obtained is July 1, 2005, and there is no obligation to retrofit existing, “legacy” devices. Or he could have been confused by the labeling requirement that “Digital Cable-Ready” products must contain “DVI/HDMI” (not 1394) inputs *on a phased-in basis.* (15.123(6)) This also is an interface already in very common use *in the form in which the labeling obligation requires it.*

Such a practical analysis of the timeline for the waiver process advocated by the MPAA points out its absurdity. MPAA's advocacy of the July 1, 2004 effective date merits the same characterization.

Sincerely,

Michael Petricone

cc: Commissioner Kathleen Abernathy
Commissioner Jonathan Adelstein
Commissioner Michael Copps
Secretary Marlene H. Dortch
Kenneth Ferree
Rick Chessen